

Sr. No.232

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1.

CWP-5205-2004(O&M)

Dr. Raj Kumar Gupta

.....Petitioner

VS.

U.T, Chandigarh and others

....Respondents

2.

CWP-16678-2004(O&M)

Ravinder Kumar Mahajan

.....Petitioner

VS.

U.T, Chandigarh and others

....Respondents

3.

CWP-20165-2004(O&M)

M/s Hindustan Industrial Corporation

.....Petitioner

vs

U.T, Chandigarh and others

.....Respondents

4.

CWP-02-2005(O&M)

Maj. Gen. Kuldip Singh Bajawa (Retired)

.....Petitioner

vs.

U.T, Chandigarh and another

.....Respondents

5.

CWP-20-2005(O&M)

M/s Sushil Flour Dal and Oil Mills

.....Petitioner

vs.

U.T, Chandigarh and others

.....Respondents

6.

CWP-299-2005(O&M)

Nitin Jain and another

.....Petitioners

vs.

The Union Territory of Chandigarh and others

.....Respondents

7. CWP-1203-2008(O&M)
Date of Decision: 01.12.2016

Mrs. Dev Wati Gupta and othersPetitioner

vs.

U.T, Chandigarh and anotherRespondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present:- Mr. Alok Jain, Advocate
Mr. Arun Jain, Sr. Advocate
with Mr. P.C.Goyal, Advocate,
Mr. Amar Vivek, Advocate
Mr. Sanjeev Singh Thakur, Advocate
for Mr. Sanjiv Bansal, Advocate and
Ms. Amrita Nagpal, Advocate
for Mr. Shireesh Gupta, Advocate for the petitioners.
Mr.Suvir Sehgal,Senior Standing Counsel
with Mr. Ashish Rawal, Advocate
and Mr. P.S.Dhaliwal, Advocate
for Union Territory, Chandigarh.

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MAHESH GROVER, J

This order shall dispose of all the above mentioned seven Civil Writ Petitions bearing Nos. 5205, 16678 and 20165 of 2004, CWP Nos.02, 20 and 299 of 2005 and No.1203 of 2008, since same question of law is involved in all these writ petitions.

CWP-5205-2004(O&M)

There is no dispute of facts which we propose to extract here-
below.

An advertisement was issued in accordance with the provisions of The Capital of Punjab (Development & Regulation) Act, 1952 on 14.04.1981 inviting applications from desirous entrepreneurs for allotment

pursuant to which the petitioner and also number of other members applied, which applications were screened by the Administration to shortlist 339 candidates for allotment.

The petitioner had applied for allotment of 2 kanals plot to set up a non polluting Pharmaceuticals Industry. In terms demanded by the Administration, the petitioner deposited Rs.5,000/- being 10% of the price on 22.6.1981. After his enlistment amongst the 339 candidates, he was required to deposit 25% of the total costs which he did on 08.12.1982. The petitioner then received a communication that plot no.1320 Phase I had been allotted to him and he was required to deposit another sum of Rs.9,225/- which also the petitioner deposited and pressed his claim for possession. Fifty seven allottees were given the possession while twenty one took back their money. Seven allottees were given option to change their plots and two hundred fifty four allottees could not be given possession of any land which led to the filing of the civil writ petition seeking directions for the Union Territory, Chandigarh to deliver possession of the plots in the year 1987.

During the pendency of this petition, the Director Industries expressed its inability to deliver the possession as it was discovered that the land proposed to be allotted fell in the forest reserved area.

A new policy was then framed to accommodate 250 allottees accompanied with a decision to reduce the plot size by at least 25% qua 4 marlas and 2 kanals plots. In February 1991, the petitioner was called upon to give his consent for allotment of 1 ½ kanals plot instead of 2 kanals for which he was an applicant in terms of the reduced area policy.

It was proposed to give the plots by way of draw of lots.

In the interregnum, various writ petitions which had come to be

filed and at least one of them stood decided on 15.11.1991 leading to the filing of the Letters Patent Appeal No. 1631 of 1991 were clubbed together and on 30.08.2001, the Letters Patent Bench disposed of the appeal by giving the following directions:-

“(i) The prayer of the appellants/petitioners for directing the authorities of Chandigarh Administration to hand over possession of the plots allotted on the basis of draw held in November 1982 is rejected.

However, the authorities of Chandigarh Administration are directed to issue allotment letters to these appellants/petitioners, who had given consent for allotment of alternative plots of similar sizes and who were successful in the draw held on 27.03.1991. They should be charged price at the rate prevailing on the date of draw.

3. Those, who were declared successful in the draw held on 27.03.1991, but cannot be allotted plots due to non-availability of sufficient land in the wake of prohibition imposed vide notification dated 05.01.1988 shall be allotted plots in any other scheme already framed or which may be framed hereafter by Chandigarh Administration.

4. Those, who are declared successful in

the draw held in 1982, but did not give consent for allotment of alternative plots shall be refunded the amount deposited by them with interest at the rate of 12% from the date of deposit till the date of actual payment.

5. *Within one month from the date of receipt of this order, Chandigarh Administration shall get published in the Tribune the list of the applicants, who had given consent for allotment of alternative plots and were declared successful in the draw held on 27.03.1991 specifying the number of plots earmarked for them.*

6. *Notification dated 28.04.2000 is held inapplicable and inoperative qua the allotments made to the appellants/petitioners on the basis of the draw held on 27.03.1991.*

7. *The concerned authorities of Chandigarh Administration shall hand over possession of the plots to the successful appellants/petitioners within two months from the date of submission of copy of this order.”*

Evidently, the petitioner was one of those persons who had been successful in the initial stage and had deposited the entire amount but was

the plot as land fell within the reserved forest area. When the decision to shrink the area of the plot was taken by the Administration even at that point of time, the petitioner had given his consent to abide by the decision of the Administration.

One of the directions given by the Letters Patent Bench at serial No. 5 mandated a publication in the Tribune of the list of the applicants who had given consent for allotment of an alternative plot and declared successful in the draw of lots held on 27.03.1991.

The petitioner appeared in this list with a duly identified number of plot intended to be given to him.

This was followed up by the Administration with a communication that the petitioner satisfy them about not having a plot in Chandigarh, Mohali or Panchkula which the petitioner did by submitting a duly attested affidavit containing a declaration that he or his family did not own any industrial plot in Chandigarh, Mohali or Panchkula.

The possession of the plot was still not given to the petitioner leading to several representations which met with no reply, consequent to which, the present writ petition has been filed seeking appropriate directions to the respondent – Union Territory to release the plot to the petitioner.

The decision of the Letters Patent Bench rendered in LPA-1631-1991, reproduced in the earlier part of this judgment, was challenged before the Hon'ble Supreme Court. The persons who had not initially given consent to the offer of the Administration for allotment of plots with a shrunken area, those writ petitioners were described as non consentees and they too, filed SLPs while the Union Territory - Chandigarh aggrieved by

the directions given by the Letters Patent Bench against the directions

pegging down the price to that prevalent in 1991 also challenged the directions by filing SLP which was disposed of by the Hon'ble Supreme Court on 13.04.2004, the conclusions of which may be extracted here-below:

“ As a result of detailed discussion aforesaid, the appeals and connected matters are disposed of by partly maintaining the directions contained in the impugned order of the High Court but with the modification, substitution and addition of directions as mentioned below”

1. The prayer of the appellants/petitioners for directing the authorities of Chandigarh Administration to hand over possession of the plots allotted on the basis of draw held in November, 1982 is rejected.

2. The total available plots of different sizes as mentioned in Annexure - A to the affidavit of the Administration of UTC, shall be allotted by draw of lots separately or jointly as per the procedure evolved by the Administration to 23 consentees found eligible in accordance with the new environmental norms and to 13 allottees of one kanal plot. It is for the Administration

of UTC to work out the manner in which draw of lots will be held between 23 consentees and 13 allottees of one kanal plot for the available number of plots of different sizes as contained in Annexure-A to the affidavit. It is made clear that the Administration of UTC will have liberty keeping in view the industrial projects submitted by the consentees and other restrictions if they make it necessary to suitably alter the sizes of plots to accommodate the identified 23 consentees. It is clarified that allotment of plots from the area of the scheme which falls within restricted 900 metres zone from the air-base under Aircrafts Act, would be granted by the Administration with a condition that if in future, any such restriction is reimposed, the allotments may be cancelled and there would be no liability on the Administration of UTC to pay any damage or compensation to the parties due to non utilisation of plots or its cancellation. If the allotments of plots in the restricted zone are cancelled due to restriction aforesaid, the price paid for the plots shall be refunded to the parties

concerned without any liability of interest on the price which remained as deposit with the Administration.

3. *The consentees and allottees of one kanal plot, who even though found eligible for allotment, because of limited number of plots (as mentioned in Annexure-A), do not get accommodation in the available plots, they be considered on the same price paid by them for alternative plots in the new Industrial area phase-III i.e Mouli Jagran. It is made clear that the requirement of the Act and the Rules and the new environmental norms as existing on the date of fresh allotment of plots in the industrial area phase-III would be made applicable to such consentees and allottees of one kanal plot.*

4. *The non-consentees shall be granted by the Administration of UTC, option by asking them to submit their willingness in writing within a period of one month from the date of this order for considering allotment to each of them a suitable plot in the new industrial zone Phase III at Mouli Jagran. It is left to the Administration of*

UTC to evolve a fair and just method of allotment by draw of lots in accordance with the Act and the Rules. It is made clear that the allotment of plots in the new Industrial area III i.e Mouli Jagran would be at the price prevailing on the date of fresh allotments. The price with interest already paid by the non-consentees for their original plots, if so far not refunded to them, shall be adjusted towards the total price payable for the new sites. It is also made clear that in accordance with existing industrial policy and the environmental norms, the allottees will have to submit their project reports for considering viability of their proposed industries by the Administration.

In the event, the non-consentees are unwilling to take plots in the new industrial zone phase III or their project reports are ultimately found to be not approvable, the price deposited by them for the original plots would be refunded to them with interest at the rate of 12% per annum from the date of initial deposit.

5. *The reliefs in the nature of directions*

made in favour of consentees and non-consentees and allottees of one kanal plot are restricted only to such of them who were parties before the High Court. All claims of remaining consentees or non-consentees or allottees of one kanal plot, who were not parties in the cases before the High Court, stand rejected.

6. *Notification dated 28.04.2000 containing new Industrial Policy would not be made applicable to the allottees of plots in phase-I & II who are successful in fresh draw of lots to be held under the above directions.*

7. *The Administration of UTC shall complete the requisite formalities and carry out the directions made above in accordance with law within a period of four months from the date of this order and hand over possession of the plots to the successful allottees.*

8. *All applications seeking interventions, impleadment as parties and special leave petitions filed by parties, who were not parties before the High Court, are, hereby, rejected.*

As a result of the discussion aforesaid, the appeals and connected matters are disposed of by substituting/modifying above-mentioned directions for the directions contained in the impugned order of the High Court.

Keeping in view the peculiar circumstances of the case, we make no order as to costs which shall be borne by the parties as incurred by them.

*Sd/-
(Shivaraj V. Patil)*

*Sd/-
(D.M.Dharmadhikari)*

*New Delhi
13th April, 2004”*

In the present petition, the Union Territory, Administration has taken refuge in clause 5 to deny the allotment and possession to the petitioner and we may, at the cost of repetition, extract the clause 5 once again for ready reference:

“5. The reliefs in the nature of directions made in favour of consentees and non-consentees and allottees of one kanal plot are restricted only to such of them who were parties before the High Court. All claims of remaining consentees or non-consentees or allottees of one kanal plot, who were not parties in the cases before the High Court, stand rejected.”

It has been vehemently urged before us by the learned

counsel appearing for the Union Territory that the relief was restricted only to such of the people who were parties before the High Court and since the petitioner was not a part of bunch of petitions, he would be dis-entitled to any relief in terms of the judgment of the Hon'ble Supreme Court.

It would not be out of place to mention here that the petitioner had initiated this petition prior to the judgment of the Hon'ble Supreme Court but even this would not make any substantial difference to his claim considering the facts that we have culled out in the initial portion of our judgment of the petitioner having complied with the requirements in totality.

Clearly, the petitioner was one of those aspirants who had faithfully abided by the offer made by the Union Territory, Chandigarh including his adherence to subsequent attempt by the Administration to accommodate successful allottees by reducing the area. He was, therefore, clearly a 'consentee', - a term adopted by the Hon'ble Supreme Court to be enabled to the benefit of an industrial plot.

We are of the opinion that it would be a travesty to link the term consentee to bind it only to the writ petitioners who were there in the Court as writ petitioners at an earlier point of time and subsequently as appellants before the Hon'ble Supreme Court. It would be the cumulative effect of the facts when taken sequentially that would determine whether the petitioner can be termed as a consentee or a non consentee.

The offer of the Administration, the acceptance thereof by the petitioner, are the two relevant factors to determine his status as a consentee and thus, to deprive him of the allotment by placing a narrow interpretation to clause 5 of the directions given by Hon'ble Supreme Court would be

defeating the cause of justice.

Clause 5 of the directions given by the Hon'ble Supreme Court is largely restricted to one kanal category of plots whereas the petitioner had acceded to 1 ½ kanals. It has also been brought to our notice that only 2 kanals and 1 ½ kanals of plots are available.

It must be understood that the petitioner's name was clearly considered and reflected in the advertisement issued by the Administration with a specific plot mentioned as intended allotment and having done this, the Administration cannot retract its steps to deny the allotment to the petitioner.

We are also conscious of the fact that the Hon'ble Supreme Court had intended to restrict the benefit to the parties before the High Court so as to obviate the chances of raising belated claims by persons who had slept over their right. The case of the petitioner cannot be treated in such a category for his having been vigilant right from the beginning and having complied with the requirements of the Administration and thus would have to be treated as person who has been unduly left out of allotment and possession largely on account of the fault of the Administration.

We would, thus, unhesitatingly accept the petition and negate the reasoning of the Union Territory to hold the petitioner entitled to the allotment of the plot measuring 1 ½ kanals on the price directed by the Hon'ble Supreme Court i.e of the year 2004.

CWP-16678-2004(O&M) and CWP-299-2005(O&M)

The writ petitioners in the instant case also were compliant in all aspects to accede to the offer of the Union Territory for one kanal plot and their names were also included in the publication but they have been

For the reasons that we have stated above in CWP-5205-2004, we are of the opinion that though the petitioners had given their consent at an early point of time to the Administration when the proposed reduction of size of plot was there, they would clearly be dis-entitled to relief as they did not file any writ petition and would be covered by the observations of the Hon'ble Supreme Court which are as under:-

“ Now we are left with the individuals and parties falling in none of the three categories i.e i) consentees, 2) non-consentees, or 3) allottees of one kanal of plot. They were not parties before the High Court and were invited to participate in the discussion and negotiations which have taken place during pendency of these cases before us. They have approached by way of special leave petitions or applications seeking interventions or impleadment as parties in the present cases. This group of individuals and parties, who were not parties before the High Court either as petitioners or respondents and who are merely intervenors or parties seeking impleadments and/or have sought permission to file special leave petitions cannot be allowed to join race for allotment of available alternative plots. It will have to be presumed that having not ventilated their grievances and enforced their rights, if any, at any earlier stage, they

have abandoned their claims. Merely because during pendency of Court proceedings, some rounds of negotiation and discussions took place in which the Administration also invited them, would not furnish them a cause of action to raise their claims which they had earlier given up by their inaction and lapse. In adjusting equities and on rule of fairness, those who have languished and slept over their rights have to be denied any relief more so when there has been such a time lag between the original allotment and the proposed allotment of alternative plots. In the meantime, there have been various developments including escalation of land prices. Any speculative deals and attempt to take chance of getting allotment by such parties have to be discouraged. We, therefore, refuse to grant any relief to remaining class of consentees or non consentees and other allottees who were not parties in the litigation before the High Court.”

Both the writ petitions are, therefore, declined.

CWP-20165-2004(O&M)

In this case, the petitioner had not even given his consent.

Therefore, for the reasons stated in CWP-5205-2004, we do not consider this

within the category which had been declined benefit.

Disposed of accordingly.

CWP-02-2005(O&M)

In this case, the petitioner had initially filed a complaint before the Consumer Redressal Commission in the year 1997 and subsequently filed a writ petition No. 18234 in the year 2003 which was disposed of on 23.07.2004 mandating the respondents to consider his claim in terms of the judgment of the Hon'ble Supreme Court which had by then fructified on 13.04.2004. The claim was considered only to be rejected leading to the filing of the present writ petition.

The petitioner in this case has also been vigilant enough since 1997 and had even given his consent to allotment of a reduced plot area and thus, he would, also be considered as a consentee in terms of the reasoning given in CWP-5205-2004.

Petition stands disposed of accordingly.

CWP-20-2005(O&M)

In the present case, the writ petitioner was also a consentee and filed Ist Writ Petition No.15773-2002 which was withdrawn to approach the respondent authorities for consideration of his claim. Subsequently, another Writ Petition No.16150 of 2003 was filed which was disposed of on 23.07.2004 and since the judgment of the Hon'ble Supreme Court had been rendered on 13.03.2004, the writ petition mandated that the claim of the petitioner be considered in terms of the judgment rendered by the Hon'ble Supreme Court which was rejected leading to the filing of the present writ petition.

2004, we are of the opinion that this case of the petitioner would also be considered as a consentee to warrant success.

Disposed of in the above terms.

CWP-1203-2008(O&M)

In this case the original allottee had expired and the case was pursued by his legal representatives who filed CWP No. 4770 of 2004 pressing for their claim as the original allottee had consented to the plot of a reduced area. This writ petition was disposed of on 18.03.2004 with a direction to the Union Territory to consider the claim which was rejected leading to the filing of the present writ petition in the year 2008. We are of the opinion that for the reasons mentioned in CWP-5205-2004, the claim of the petitioner would also deserve acceptance.

Ordered accordingly.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

December 01, 2016
mamta

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No